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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.        | CONFIRMATION NO.       |
|--|-------------|----------------------|----------------------------|------------------------|
| 10/736,427   | 12/15/2003  | Jerry Dennis Sacks   | 1219.02                    | 3965                   |
| 29637 7590 02/21/2008<br>BUSKOP LAW GROUP, P.C.<br>4511 Dacoma Street<br>HOUSTON, TX 77092 |             |                      |                            |                        |
|  |             |                      | EXAMINER<br>PEACHES, RANDY |                        |
|  |             |                      | ART UNIT<br>2617           | PAPER NUMBER           |
|  |             |                      | MAIL DATE<br>02/21/2008    | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/736,427

Applicant(s)

SACKS ET AL.

Examiner

Randy Peaches

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2008.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/18/2008 has been entered.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 1-21** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 1, the Examiner respectfully submits that the amended claim 1 recites the limitation: "...**directly communicating with a user and an order system server;**". However, the Applicant's Specification, as filed, failed to provide support for such limitation; thus, constitutes as new matter. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. ***Claims 1-21*** are rejected under 35 U.S.C. 103(a) as being unpatentable over Swartz et al. (U.S. Patent Publication 2003/0020629 A1) in view of Bunte et al. (U.S. Patent Number 5,875,070).

Regarding ***claim 1***, Swartz et al. discloses a system for product selection at a location comprising:

- a wearable wrist input/output unit (90), which reads on claimed "wearable mobile computer," hereinafter referenced as wearable mobile computer, with a memory and a processor (94). See paragraphs [0051 and 0085, FIGURES 3 and 8];
- bar code reader (92) in communication with the said wearable mobile computer (90). See paragraph [0085];
- a viewing and input component consisting of a member of the group:
  - a display integral with the wearable mobile computer. See FIGURE 5;

- a tactile input device in communication with the wearable mobile computer. See paragraph [0104];
  - a display screen that is a touch screen in communication with the wearable mobile computer; and
  - combinations thereof;
- a speaker, which reads on claimed "audio output device," in communication with the said wearable mobile computer;
- an headset (192), which reads on claimed "audio input device," in communications with the wearable mobile computer. See paragraph [0094];
- a printer in communications with the wearable mobile computer. See paragraph [0024];
- radio frequency identification (RFID) reader in communication with the wearable mobile computer. See paragraphs [0024 and 0017];
- wherein the wearable mobile computer is further adapted for communication between:
  - an order systems server (810). See FIGURE 7 and paragraphs [0022,0060 and 0063];
  - a user (802). See FIGURE 7
- wherein the order systems server is adapted for communication between the wearable mobile computer at least one base/data transfer station (804), which reads on claimed "external computer system." See paragraph [0062 and 0063].

However, Swartz et al. fails to clearly render support wherein the software, which controls the functions of the said wearable mobile computer, resides in the said memory. In addition Swartz et al. fails to clearly teach of a trainable voice recognition software residing in the memory of the said wearable mobile computer and an order filing application software residing in the memory.

Bunte et al. teaches in column 8 lines 61-64 of a portable data terminal, which reads on claimed "wearable mobile computer," wherein a text-to-speech software resides in the memory, i.e. Flash memory, RAM, etc. In addition, Bunte et al. discloses of a customizable voice communication system residing in the said portable data terminal. Bunte et al. further discloses in column 9 lines 1 and 2 wherein the said memory may also function as a ROM storage for the voice communications system operating code, which is interpreted by the Examiner as software repository, capable of storing the software needed to provide the function of communicating text to speech and receiving communications from the user using the said customizable voice communication system of the said portable data terminal.

The Examiner takes official notice that it is old and well known in the art of communications that the various software function stored within a single device is capable to work independently, as well as, in combination in order for the said device to function properly.

Therefore it would has been obvious to one of ordinary skill in the art at the time the invention was made to have Swartz et al. to include Bunte et al. in order to provide a

portable data terminal, capable of collecting business related information by using various features locally installed in the said portable data terminal.

Regarding **claim 2**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the bar code reader is either wired or wireless. See paragraph [0023].

Regarding **claim 3**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the wearable mobile computer is selected from the group: **a handheld computer, a PDA**, and a notepad computer. See paragraph [0093], specifically the last 4 sentences.

Regarding **claim 4**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the display is a member of the group: **LCD display**, a plasma display, a monochrome display, and a colored display. See paragraph [0085].

Regarding **claim 5**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the audio output device is a member of the group:

- a speaker disposed integrally with the wearable mobile computer, a headset with at least one earphone, and an external speaker. See paragraph [0094].

Regarding **claim 6**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the audio output device is either wired or wireless. See FIGURE 7

Regarding **claim 7**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the tactile input device is either wired or wireless. See paragraph [0024].

Regarding **claim 8**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the tactile input device is a keyboard. See paragraph [0104].

Regarding **claim 9**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the text-to-speech software is adapted to convert text to an audio output. See paragraph [0098].

Regarding **claim 10**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the voice



recognition software is adapted to convert an audio signal to text. See paragraph [0099 and 0101];

Regarding **claim 11**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the order filling applications software is adapted to manage a process for selecting product. See paragraph [0060].

Regarding **claim 12**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the radio frequency identification (RFID) reader is in wireless communication with the wearable mobile computer. See paragraphs [0024 and 0017];

Regarding **claim 13**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the RFID reader is a wireless reader of radio frequency identification data. See paragraphs [0024 and 0017] and FIGURE 17;

Regarding **claim 14**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the order systems server is selected from the group: **a Personal Computer**, a UNIX-based™

server, an NTTM server, a WINDOWS-based<sup>TM</sup> server, and a LINUX based server. See FIGURE 7 and paragraph [0062].

Regarding **claim 15**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the external computer system is selected from the group: **a Personal Computer**, a UNIX-based<sup>TM</sup> server, an NTTM server, a WINDOWS-based<sup>TM</sup> server, and a LINUX-based server. See FIGURE 7 and paragraph [0062].

Regarding **claim 16**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the audio input device is a microphone. See FIGURE 17 and paragraph [0099].

Regarding **claim 17**, according to **claim 1**, Swartz et al. continues to disclose wherein the printer is in wired or wireless communications with the wearable mobile computer. See FIGURE 8 and paragraph [0085].

Regarding **claim 18**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 1**, Swartz et al. continues to disclose wherein the word product can mean an object, item, case, containing piece of equipment and any other item that can be selected.

Regarding **claim 19**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 15**, Swartz et al. continues to disclose wherein the external computer system is a member of the group: customer order system, a customer warehouse management system, loader system server, **an inventory control system and combinations thereof**. See FIGURE 7 and paragraphs [0022,0060 and 0063];

Regarding **claim 20**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 15**, Swartz et al. continues to disclose wherein the external computer is wirelessly connected to the order systems server. See FIGURE 7 and paragraphs [0022,0060 and 0063];

Regarding **claim 21**, as the combination of Swartz et al. and Bunte et al. are made, the combination according to **claim 14**, Swartz et al. continues to disclose wherein the order systems server is wireless. See FIGURE 7 and paragraphs [0022,0060 and 0063];

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy Peaches whose telephone number is (571) 272-7914. The examiner can normally be reached on Monday - Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph H. Feild can be reached on (571) 272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Randy Peaches  
RP



CHARLES N. APPIAH  
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